

ASSEMBLY BILL

No. 619

Introduced by Assembly Member Leslie

February 17, 2005

An act to amend Sections 1365.1 and 1367.1 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 619, as introduced, Leslie. Common interest developments: assessments.

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments and authorizes the association that manages the development to levy assessments to fulfill its obligations. The act provides that a regular or special assessment of the association, late charges, reasonable costs of collection, attorney's fees, and interest, as specified, are a debt of the owner of the separate interest at the time the assessment or other sums are levied, and are a lien on the owner's separate interest when the association records a notice of delinquent assessment and follows a specified process. The association is permitted to enforce the lien in any manner permitted by law including a sale by a trustee, also known as nonjudicial foreclosure.

The act gives an owner the right to request a meeting with the board of directors of the association to discuss a payment plan for the delinquent assessments, and requires the association to meet with the owner and provide the owner with the standards for payment plans, if any exist. The act also requires the association to distribute an annual notice to each member of the association, as specified, generally outlining rights and responsibilities regarding assessments, foreclosure

and nonjudicial foreclosure, payments, and meetings to discuss payment plans.

This bill would eliminate the right of an owner to request a meeting, and the obligation of the board of directors of the association to meet with the owner, to discuss a payment plan. Instead, the bill would require the notice of delinquent assessment to include a checkbox and signature line for the owner to request a payment plan, and would require the association to provide the owner with the standards for payment plans, as specified. The bill would require any notice of default to be served according to specified methods, and would require the board to approve the commencement of any sale conducted by a trustee, as specified.

The bill would require the association to send copies of all notices described in these provisions to a secondary address, in care of the owner, upon the written request of the owner. The bill also would revise the contents of the annual notice provided by the association to its members to conform with these changes and to include a schedule of reasonable fees and costs that the owner could be charged throughout any portion of the nonjudicial collection process.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1365.1 of the Civil Code is amended to
2 read:

3 1365.1. (a) The association shall distribute the written notice
4 described in subdivision (b) to each member of the association
5 during the 60-day period immediately preceding the beginning of
6 the association's fiscal year. The notice shall be printed in at least
7 12-point type. An association distributing the notice to an owner
8 of an interest that is described in Section 11212 of the Business
9 and Professions Code that is not otherwise exempt from this
10 section pursuant to subdivision (a) of Section 11211.7 *of the*
11 *Business and Professions Code*, may delete from the notice
12 described in subdivision (b) the portion regarding meetings and
13 payment plans. *The notice shall include a schedule of reasonable*
14 *fees and costs that the owner could be charged throughout any*
15 *portion of the nonjudicial collection process.*

16 (b) The notice required by this section shall read as follows:

1 “NOTICE ASSESSMENTS AND FORECLOSURE

2
3 This notice outlines some of the rights and responsibilities of
4 owners of property in common interest developments and the
5 associations that manage them. Please refer to the sections of the
6 Civil Code indicated for further information. A portion of the
7 information in this notice applies only to liens recorded on or
8 after January 1, 2003. You may wish to consult a lawyer if you
9 dispute an assessment.

10
11 ***SECONDARY NOTICE***

12
13 *An owner has the right to submit a written request to the*
14 *association identifying a secondary address to which all*
15 *collection notices must be sent. (Section 1367.1 of the Civil*
16 *Code)*

17
18
19 **ASSESSMENTS AND NONJUDICIAL FORECLOSURE**

20
21 The failure to pay association assessments may result in the
22 loss of an owner’s property without court action, often referred to
23 as nonjudicial foreclosure. When using nonjudicial foreclosure,
24 the association records a lien on the owner’s property. The
25 owner’s property may be sold to satisfy the lien if the lien is not
26 paid. Assessments become delinquent 15 days after they are due,
27 unless the governing documents of the association provide for a
28 longer time. (Sections 1366 and 1367.1 of the Civil Code)

29 In a nonjudicial foreclosure, the association may recover
30 assessments, reasonable costs of collection, reasonable attorney’s
31 fees, *reasonable fees for preparing and monitoring payment*
32 *plans*, late charges, and interest. The association may not use
33 nonjudicial foreclosure to collect fines or penalties, except for
34 costs to repair common areas damaged by a member or a
35 member’s guests, if the governing documents provide for this.
36 (Sections 1366 and 1367.1 of the Civil Code)

37 The association must comply with the requirements of Section
38 1367.1 of the Civil Code when collecting delinquent
39 assessments. If the association fails to follow these requirements,
40 it may not record a lien on the owner’s property until it has

1 satisfied those requirements. Any additional costs that result from
2 satisfying the requirements are the responsibility of the
3 association. (Section 1367.1 of the Civil Code)

4 At least 30 days prior to recording a lien on an owner's
5 separate interest, the association must provide the owner of
6 record with certain documents by certified mail. Among these
7 documents, the association must send a description of its
8 collection and lien enforcement procedures and the method of
9 calculating the amount. It must also provide an itemized
10 statement of the charges owed by the owner. An owner has a
11 right to review the association's records to verify the debt.
12 (Section 1367.1 of the Civil Code)

13 If a lien is recorded against an owner's property in error, the
14 person who recorded the lien is required to record a lien release
15 within 21 days, and to provide an owner certain documents in
16 this regard. (Section 1367.1 of the Civil Code)

17 The collection practices of the association may be governed by
18 state and federal laws regarding fair debt collection. Penalties can
19 be imposed for debt collection practices that violate these laws.

20 21 PAYMENTS 22

23 When an owner makes a payment, he or she may request a
24 receipt, and the association is required to provide it. On the
25 receipt, the association must indicate the date of payment and the
26 person who received it. The association must inform owners of a
27 mailing address for overnight payments. (Section 1367.1 of the
28 Civil Code)

29 An owner may dispute an assessment debt by giving the board
30 of the association a written explanation, and the board must
31 respond within 15 days if certain conditions are met. An owner
32 may pay assessments that are in dispute in full under protest, and
33 then request alternative dispute resolution. (Sections 1366.3 and
34 1367.1 of the Civil Code).

35 An owner is not liable for charges, interest, and costs of
36 collection, if it is established that the assessment was paid
37 properly on time. (Section 1367.1 of the Civil Code)

MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a ~~time-share~~ *timeshare* may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, ~~if any exist~~. (Section 1367.1 of the Civil Code)

All associations must have a payment plan available to those owners who have received a notice of delinquent assessment, which may not be less than three months nor greater than six months in duration, unless the board, in its discretion, authorizes a longer payment plan. Payment plans may incorporate assessments that accrue during the payment plan period, along with reasonable costs for the preparation and monitoring of the payment plan. (Section 1367.1 of the Civil Code)

~~The board of directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment~~ Payment plans must conform with the payment plan standards of the association, ~~if they exist~~. (Section 1367.1 of the Civil Code)”

SEC. 2. Section 1367.1 of the Civil Code is amended to read:

1367.1. (a) A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney’s fees, if any, and interest, if any, as determined in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due under this subdivision, the association shall notify the owner of record in writing by certified mail *at the owner’s address of record identified within the association’s records and any secondary address provided to the association* of the following:

(1) A general description of the collection and lien enforcement procedures of the association and the method of calculation of the amount, a statement that the owner of the separate interest has the right to inspect the association records, pursuant to Section 8333 of the Corporations Code, and the

1 following statement in 14-point boldface type, if printed, or in
2 capital letters, if typed: “IMPORTANT NOTICE: IF YOUR
3 SEPARATE INTEREST IS PLACED IN FORECLOSURE
4 BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT
5 MAY BE SOLD WITHOUT COURT ACTION.”

6 (2) An itemized statement of the charges owed by the owner,
7 including items on the statement which indicate the amount of
8 any delinquent assessments, the fees and reasonable costs of
9 collection, reasonable attorney’s fees, any late charges, and
10 interest, if any.

11 (3) A statement that the owner shall not be liable to pay the
12 charges, interest, and costs of collection, if it is determined the
13 assessment was paid on time to the association.

14 ~~(4) The right to request a meeting with the board as provided~~
15 ~~by subdivision (c).~~

16 (b) Any payments made by the owner of a separate interest
17 toward the debt set forth, as required in subdivision (a), shall first
18 be applied to the assessments owed, and, only after the
19 assessments owed are paid in full shall the payments be applied
20 to the fees and costs of collection, attorney’s fees, late charges, or
21 interest. When an owner makes a payment, the owner may
22 request a receipt and the association shall provide it. The receipt
23 shall indicate the date of payment and the person who received it.
24 The association shall provide a mailing address for overnight
25 payment of assessments.

26 (c) (1) An owner may dispute the debt noticed pursuant to
27 subdivision (a) by submitting to the board a written explanation
28 of the reasons for his or her dispute. The board shall respond in
29 writing to the owner within 15 days of the date of the postmark
30 of the explanation, if the explanation is mailed within 15 days of
31 the postmark of the notice.

32 (2) An owner, other than an owner of any interest that is
33 described in Section 11212 of the Business and Professions Code
34 that is not otherwise exempt from this section pursuant to
35 subdivision (a) of Section 11211.7 *of the Business and*
36 *Professions Code*, may submit a written request ~~to meet with the~~
37 ~~board to discuss, or mark the checkbox described in subdivision~~
38 ~~(d), for a payment plan for the debt noticed pursuant to~~
39 ~~subdivision (a). The association shall provide the owners the~~
40 ~~standards for payment plans, if any exist. The board shall meet~~

1 ~~with the owner in executive session within 45 days of the~~
2 ~~postmark of the request, if the request is mailed within 15 days of~~
3 ~~the date of the postmark of the notice, unless there is no regularly~~
4 ~~scheduled board meeting within that period, in which case the~~
5 ~~board may designate a committee of one or more members to~~
6 ~~meet with the owner that shall, at a minimum, provide for a~~
7 ~~payment plan of not less than three months nor greater than six~~
8 ~~months in duration, unless the board, in its discretion, authorizes~~
9 ~~a longer payment plan. Payment plans may incorporate any~~
10 ~~assessments that accrue during the payment plan period, along~~
11 ~~with reasonable costs for the preparation and monitoring of the~~
12 ~~payment plan. Payment plans shall not impede an association's~~
13 ~~ability to place a lien on the property pursuant to this section. In~~
14 ~~the event of a default on any payment plan, collection action~~
15 ~~pursuant to this section and Sections 2924, 2924b, and 2924c~~
16 ~~shall be resumed at the point prior to commencement of the~~
17 ~~payment plan. No additional late fees shall accrue during the~~
18 ~~payment plan period provided the owner is in compliance with~~
19 ~~the terms of the payment plan.~~

20 (d) The amount of the assessment, plus any costs of collection,
21 late charges, and interest assessed in accordance with Section
22 1366, shall be a lien on the owner's interest in the common
23 interest development from and after the time the association
24 causes to be recorded with the county recorder of the county in
25 which the separate interest is located, a notice of delinquent
26 assessment, which shall state the amount of the assessment and
27 other sums imposed in accordance with Section 1366, a legal
28 description of the owner's interest in the common interest
29 development against which the assessment and other sums are
30 levied, the name of the record owner of the owner's interest in
31 the common interest development against which the lien is
32 imposed. In order for the lien to be enforced by nonjudicial
33 foreclosure as provided in subdivision (g), the notice of
34 delinquent assessment shall state the name and address of the
35 trustee authorized by the association to enforce the lien by sale.
36 The notice of delinquent assessment shall be signed by the
37 person designated in the declaration or by the association for that
38 purpose, or if no one is designated, by the president of the
39 association, and mailed in the manner set forth in Section 2924b,
40 to all record owners of the owner's interest in the common

1 interest development no later than 10 calendar days after
2 recordation. *The notice of delinquent assessment also shall*
3 *include a checkbox and signature line for the owner to request a*
4 *payment plan, that shall constitute the owner's request for a*
5 *payment plan consistent with paragraph (2) of subdivision (c)*
6 *upon the owner marking, signing, and forwarding back the notice*
7 *of delinquent assessment to the association by first-class mail,*
8 *return receipt requested.* Within 21 days of the payment of the
9 sums specified in the notice of delinquent assessment, the
10 association shall record or cause to be recorded in the office of
11 the county recorder in which the notice of delinquent assessment
12 is recorded a lien release or notice of rescission and provide the
13 owner of the separate interest a copy of the lien release or notice
14 that the delinquent assessment has been satisfied. A monetary
15 charge imposed by the association as a means of reimbursing the
16 association for costs incurred by the association in the repair of
17 damage to common areas and facilities for which the member or
18 the member's guests or tenants were responsible may become a
19 lien against the member's separate interest enforceable by the
20 sale of the interest under Sections 2924, 2924b, and 2924c,
21 provided the authority to impose a lien is set forth in the
22 governing documents. It is the intent of the Legislature not to
23 contravene Section 2792.26 of Title 10 of the California Code of
24 Regulations, as that section appeared on January 1, 1996, for
25 associations of subdivisions that are being sold under authority of
26 a subdivision public report, pursuant to Part 2 (commencing with
27 Section 11000) of Division 4 of the Business and Professions
28 Code.

29 (e) Except as indicated in subdivision (d), a monetary penalty
30 imposed by the association as a disciplinary measure for failure
31 of a member to comply with the governing instruments, except
32 for the late payments, may not be characterized nor treated in the
33 governing instruments as an assessment that may become a lien
34 against the member's subdivision separate interest enforceable by
35 the sale of the interest under Sections 2924, 2924b, and 2924c.

36 (f) A lien created pursuant to subdivision (d) shall be prior to
37 all other liens recorded subsequent to the notice of assessment,
38 except that the declaration may provide for the subordination
39 thereof to any other liens and encumbrances.

(g) An association may not voluntarily assign or pledge the association's right to collect payments or assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the association; however, the foregoing provision may not restrict the right or ability of an association to assign any unpaid obligations of a former member to a third party for purposes of collection. Subject to the limitations of this subdivision, after the expiration of 30 days following the recording of a lien created pursuant to subdivision (d), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. *In addition to the requirements of Sections 2924, 2924b, and 2924c, any notice of default shall be served in the manner prescribed in Section 1162 of the Code of Civil Procedure.* Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trust. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d. *Notwithstanding this subdivision, the board shall, by majority vote, approve the commencement of any sale conducted by a trustee pursuant to Sections 2924, 2924b, and 2924c, and transmit the board's written authorization to the trustee.*

(h) Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

(i) If it is determined that a lien previously recorded against the separate interest was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

- 1 (j) (1) An association that fails to comply with the procedures
2 set forth in this section shall, prior to recording a lien,
3 recommence the required notice process.
- 4 (2) Any costs associated with recommencing the notice
5 process shall be borne by the association and not by the owner of
6 a separate interest.
- 7 (k) *The association shall send copies of all notices described*
8 *in this section to a secondary address, in care of the owner, upon*
9 *the written request of the owner, in addition to sending copies of*
10 *the notices to the owner's address of record.*
- 11 (l) This section only applies to liens recorded on or after
12 January 1, 2003.